

## **California Fair Political Practices Commission**

### **MEMORANDUM**

**To:** Chairman Getman and Commissioners Downey, Knox, Scott and Swanson

**From:** Holly B. Armstrong, Commission Counsel  
Luisa Menchaca, General Counsel

**Re:** Proposition 34 Regulations: Termination of Committees -- Repeal of  
Emergency Regulation 18404.2 and Adoption of Proposed Regulation 18404.1

**Date:** January 2, 2002

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#### **Introduction and Procedural History**

At the July 2001 Commission meeting, the Commission requested that staff pursue a rule mandating termination of candidate controlled committees as a means of implementing Proposition 34.

The termination of committees regulation, proposed regulation 18404.1, was presented for pre-notice discussion at the August 3, 2001 meeting. The Commission subsequently requested additional options and requested that staff conduct further research on the actual time committees took to wind up their operations, and the types of debt with which committees were likely to be left at the conclusion of a campaign.

Proposed regulation 18404.1 was presented at the Commission's October 11, 2001 meeting for a second pre-notice discussion. However, the portion of the original regulation relating to pre-January 1, 2001 committees controlled by candidates who never held or no longer hold the office for which the committees were formed, was segregated and adopted by the Commission as emergency regulation 18404.2. It requires such committees to terminate no later than December 31, 2002.

The Commission made all of the substantive decisions regarding proposed regulation 18404.1 at its October 11, 2001 meeting, and the proposed regulation was presented to the Commission for formal adoption at its meeting on December 7, 2001. The Commission expressed some concern regarding whether the phrase "elective state office" in subsection (a)(1) was specific enough to identify the specific committees being targeted for termination. The Commission directed staff to make further clarifying changes and return.

Therefore, before the Commission today is the formal adoption of proposed regulation 18404.1. Subsections (a)(1) and (a)(2) have been rewritten to accommodate the concerns expressed by the Commission at the December meeting, while still maintaining the substance of what was emergency regulation 18404.2. Consequently, the Commission is also being asked to simultaneously repeal the emergency regulation. This has been done for ease of reference for the

public. As discussed below (page 5), this will not impact emergency regulation 18404.2 since the repeal will take effect when new regulation 18404.1 is made permanent.

### **Background**

Currently, a committee retains its status as a committee “until such time as that status is terminated pursuant to Section 84214.” (Govt. Code § 82013(c).) Government Code § 84214<sup>1</sup> states:

“Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the Commission which insure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination. Such regulations shall not require the filing of any campaign statements other than those required by this chapter. In no case shall a committee which qualifies solely under subdivision (b) or (c) of Section 82013 be required to file any notice of its termination.”

The Commission’s current regulation leaves termination of a committee to the committee’s discretion.<sup>2</sup> Under the current regulation, there is no deadline for termination, and the primary incentive for old committees to formally terminate is that they will no longer have filing obligations.

### **THE FORM AND SUBSTANCE OF REGULATION 18404.1**

The proposed regulation (Exhibit A) would provide deadlines for candidate controlled committees to terminate, taking into account whether or not they are subject to Proposition 34, and whether or not the committees have debt. The regulation also requires that the campaign bank

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<sup>1</sup> All further statutory references are to the Government Code, unless otherwise specified.

<sup>2</sup> Regulation 18404(b) provides that recipient committees are terminated as follows:

“Recipient Committees. A treasurer of a committee which qualifies pursuant to Government Code Section 82013(a) may terminate the committee's status as a committee, only by completing the termination section on the Form 410 (Statement of Organization) declaring, under penalty of perjury, that the committee:

“(1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

“(2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

“(3) Has no surplus funds; and

“(4) Has filed all required campaign statements disclosing all reportable transactions.”

account be closed at the time of termination and that a successful candidate for elective state office close his or her local controlled committees. The regulation provides a procedure for obtaining an extension from the deadlines for termination of a committee under certain specific circumstances, or for good cause shown on a case-by-case basis.

The beginning of the regulation, subdivisions (a) and (b), is divided into “Pre-2001 Committees” and “2001 and Post-2001 Committees,” addressing committees to which Proposition 34 is not applicable (pre-2001), and those to which Proposition 34 is applied (2001 and post-2001). The Commission’s concerns related to subdivision (a).

### **Subdivision (a)**

Subdivision (a) invokes the provisions of regulation 18404 in terminating any committee organized for a pre-January 1, 2001 election.

Newly crafted subsection (a) incorporates the substance of emergency regulation 18404.2, and requires all candidate controlled committees other than those committees formed for the specific term of office which a candidate currently holds, to terminate no later than December 31, 2002. Former subsections (a)(1) and (a)(2) have also been incorporated into subdivision (a). These subsections have been rewritten to simplify the language of the earlier version of the regulation.<sup>3</sup>

**(a) Pre-2001 Committees.** Any candidate controlled committee organized for elective state office for an election held prior to January 1, 2001, must be terminated as set forth in 2 Cal. Code Regs. section 18404 no later than December 31, 2002, except candidates who currently hold elective state office pursuant to an election held prior to January 1, 2001, may retain one pre-2001 controlled committee, subject to the following:

Former subsections (a)(2)(A) and (a)(2)(B) have been renumbered subsection (a)(1) and (a)(2), with only very minor changes.

Subsection (a)(1) requires that committees with no debt be terminated within 9 months after the date the candidate leaves office or at the end of his or her term, whichever comes first. This subsection provides a finite date from which to calculate the termination date under normal circumstances. Since a candidate may leave office prior to the end of his or her term, the regulation also provides for calculation of the termination from the date the candidate leaves office, if that should occur before the end of his or her term of office.

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<sup>3</sup> The regulation (Exhibit A) shows in strikeout the language before the Commission in December; the proposed language is highlighted in Exhibit A. The proposed regulatory language also differs slightly from the noticed version but the regulation is substantively the same.

Subsection (a)(2) addresses committees that have debt, and requires that these committees be terminated no later than 24 months after the date the candidate leaves office or the end of his or her term, whichever comes first.

In December, the Commission approved adding a subsection to require those candidates elected prior to January 1, 2001, to terminate any old local committees formed for local elections prior to their being elected to state office. The subsection was as follows:

(a)(2)(C) Candidate controlled committees that were formed for any local elections that were held concurrent with or prior to the candidate's election to state office must be terminated no later than December 31, 2002. Such termination shall be pursuant to 2 Cal. Code Regs. section 18404.

Because of the structural changes to subdivision (a), grammatically this subsection pertaining to local committees was no longer appropriately located under subdivision (a). Therefore, this subsection has been incorporated into subdivision (d), which also deals with the termination of local committees. There is no substantive change.

### **Subdivision (b)**

The remaining provisions of the regulation have only minor changes, if any, from December. Subdivision (b) is directed to committees to which Proposition 34 is applicable, i.e., those committees designated for elections on or after January 1, 2001. Once again invoking the requirements of Regulation 18404, subsections (b)(1) and (b)(2) address, respectively, committees with and without "net debts outstanding," as that term is defined in proposed Regulation 18531.6.

Subsection (b)(1) directs that committees without net debts outstanding must be terminated no later than 9 months after the end of the term of office for the successful candidate, and 9 months after the election for the unsuccessful candidate. There have been minor non-substantive changes to tighten the wording of this subsection.

Subsection (b)(2) gives committees with net debts outstanding 24 months after the end of the term of office for the successful candidate, and 24 months after the election for the unsuccessful candidate, to raise funds to pay off their debt. Pursuant to this section, the committee must be terminated at the conclusion of that time period. The same non-substantive changes have been made to tighten the wording of this subsection as those made in subsection (b)(1).

Subsection (b)(3) provides that all time periods under subdivision (b) will not begin to run until the regulation becomes effective. This allows sufficient time for those candidates who ran in special elections in February, March or April of 2001, for whom a 9-month deadline would be approaching or even past if the regulation is adopted in December, to wind up their committees within the time frames contemplated under the regulation. A phrase has been added to clarify the committees to which this subsection is applicable.

**Subdivision (c)**

The purpose of this subdivision is to make it clear that termination of the committee ends all activity of the committee, and that any further contributions received must be returned and the candidate must close the campaign bank account.

**Subdivision (d)**

Frequently, a candidate for elective state office will have one or more local campaign committees open at the same time as he or she is running for state office. For example, he or she may be a sitting county supervisor or city councilman, and may run for State Assembly. In that case, he or she would have a committee for his or her local office, as well as for the State Assembly. This subdivision would require the candidate to close all open local committees for past elections upon election to a state office. Thus, if the candidate were unsuccessful in his or her bid for State Assembly, the local committee would remain intact. However, once elected to the State Assembly, the candidate has no further need for his or her county supervisor committee, and there is no reason that it should not be closed expeditiously. This subdivision now incorporates former subsection (a)(2)(C) requiring that such committees formed by state candidates in elections held prior to January 1, 2001, be terminated no later than December 31, 2002. It also requires that committees for elections held on or after January 1, 2001, be terminated within 24 months of the candidate's election to state office.

**Subdivision (e)**

This subdivision would require the committees to give notice to any creditors at least 60 days before their impending termination. This is currently the language of emergency regulation 18404.2, subsection (a)(2).

**Subdivision (f)**

This subdivision sets forth the procedure for seeking an extension of the time allowed for compliance with this regulation from the Executive Director. The regulation requires that a request for an extension be submitted 30 days prior to the termination date. An extension may be granted for a period of up to 6 months. Further extension requests must be submitted no later than 30 days prior to the expiration of the prior extension. The Executive Director's decision may be appealed to the Chairman. In response to a comment that the regulation clarify the finality of an appeal to the Chairman, new language has been inserted into the regulation, clarifying that the Chairman's decision may not be appealed to the Commission. Subsections (f)(1)(A), (B) and (C) provide specific guidance for obtaining relief when a committee is receiving contributions, has the ability to pay its debts, and upon a demonstration of the ability to discharge its obligations. Subsection (f)(2) allows consideration of litigation as a reason for continuing the existence of a committee. Subsection (f)(3) provides for a case-by-case consideration of special circumstances, if good cause can be shown for allowing a committee to remain open beyond the deadline imposed by the regulation.

This language is included in subdivision (b) of current emergency regulation 18404.2.

**Subdivision (g)**

This subdivision excepts local committees from the regulation. Since Proposition 34 is not applicable to local candidates, and the problems this regulation will address will not arise in the local context, there is no need to apply this regulation to local committees. Further, there is a general consensus among staff that it would be difficult to educate local candidates concerning this rule, and that applying this rule to local candidates would be inviting numerous violations, where the present system has not proven to be problematic on the local level.

**REPEAL OF EMERGENCY REGULATION 18404.2**

We are asking the Commission to repeal emergency regulation 18404.2 (Exhibit B), which was adopted in October, because the substance of this regulation has now been incorporated into proposed regulation 18404.1, which is also before the Commission for adoption today. As noted above, the substance of emergency regulation 18404.2 is contained in proposed regulation 18404.1 as follows: subdivision (a), subsection (a)(1), subdivision (e) and subdivision (f).

The repeal of emergency regulation 18404.2 would not take effect until 30 days after the filing of the repeal with the Office of Administrative Law, at which time the adoption of regulation 18404.1 would become effective, so there would be no lapse in coverage of the regulation.<sup>4</sup>

**Staff Recommendations:** Staff recommends that the Commission repeal emergency regulation 18404.2, which has now been incorporated into proposed regulation 18404.1, and adopt proposed regulation 18404.1

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<sup>4</sup> Emergency Regulation 18404.2 expires on February 16, 2002.